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VISHNU TELAGAN v. TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ORS

FEDERAL COURT, PUTRAJAYA
DAVID WONG DAK WAH CJ (SABAH & SARAWAK)
BALIA YUSOF WAHI FCJ
B
TENGKU MAIMUN TUAN MAT FCJ
ABANG ISKANDAR FCJ
NALLINI PATHMANATHAN FCJ
[CRIMINAL APPEAL NO: 05(HC)-132-05-2018(B)]
17 JUNE 2019

C

PREVENTIVE DETENTION: *Habeas corpus – Writ of habeas corpus – Detention order – Detention under ss. 3 & 6 of Dangerous Drugs (Special Preventive Measures) Act 1985 – Validity – Statement recorded by investigating officer not signed by applicant – Effect of forgery – Whether recorded statement defective – Whether*
D *detention order tainted and nullified*

This was an appeal against the decision of the learned Judicial Commissioner ruling that the respondents detaining authorities were not guilty of procedural impropriety when detaining the appellant under ss. 3 and 6 of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') and refusing to
E issue the writ of *habeas corpus* applied for by the appellant. Before the learned justices of the apex court herein, the appellant argued that his detention was invalid and unconstitutional as he did not sign the statement the investigating officer ('IO') had recorded from him, and further that his rights to counsel and to make representation to the Advisory Board were not explained to him
F in Tamil, his preferred language. It was not disputed that the signature that appeared in the said statement ('impugned recorded statement') differed from those that appeared in the appellant's supporting affidavit as well as in Form 1. The respondents nonetheless retorted that the grounds as proffered by the appellant did not vitiate the detention, as the investigating authorities,
G including the IO and the inquiry officer, in preparing the reports so relied on by the first respondent Minister in issuing the detention order, had not only ingested the appellant's impugned recorded statement, but also the oral examination of the appellant as well as statements from other witnesses. It was likewise contended that the appellant understood Bahasa Malaysia and
H that the contents of the detention order, in any case, was explained to the appellant in Tamil. Having appraised the arguments, and considering *inter alia* the authority of *Menteri Hal Ehwal Dalam Negeri Malaysia v. Chua Teck* ('*Chua Teck*'), the learned Judicial Commissioner sustained the detention order, ruled it as justifiable and dismissed the appellant's application. The appellant hence appealed.

I

Held (allowing appeal; issuing writ of *habeas corpus*)
Per David Wong Dak Wah CJ (Sabah & Sarawak) delivering the judgment of the court:

(1) Under s. 73 of the Evidence Act 1950, it is open for the court to compare the signatures to ascertain whether the signature in the impugned recorded statement was the appellant's. Upon perusing the appellant's signatures in his supporting affidavit and Form 1, where his signature appeared numerous times, it is clear that the signatures therein were consistent. However, upon comparing those signatures with the one in the impugned recorded statement, the signature in the latter document was markedly different from the ones in his affidavit and Form 1. (paras 17 & 18)

(2) The IO and inquiry officer had deposed that the appellant had signed each and every page of his impugned recorded statement. The facts however showed otherwise, as the appellant's signature did not appear on each and every page of the document. The averments having materially contradicted what was apparent on the face of the document, there was merit in the appellant's contention that the impugned recorded statement was defective. (para 19)

(3) Sections 4(1) and 4(5) of the Act mandatorily require any statement recorded to be signed by the person who made it. Considering this court's finding that the impugned recorded statement was defective, there had been a clear breach of this mandatory provision. Non-compliance with pertinent mandatory provisions must render the detention illegal. (paras 34 & 35)

(4) The first respondent was statutorily bound to consider the relevant reports before making his decision to detain the appellant. A component of those reports is the appellant's recorded statement which the mandatory provisions of the law require to be signed by the maker. It must be considered by the Minister before directing his mind to grant the detention order. Consequently, the argument that the oral examinations of the appellant by the IO had given enough materials for the Minister to exercise his discretion to issue the detention order was without merit, as it would defeat the purpose of having the said mandatory provisions. (para 41)

(5) *Chua Teck* concerned the power of the Minister to extend a detention order issued under s. 11A of the Act and the validity of the Minister considering the advice of the Advisory Board which was not empowered to give such advice. Clearly, the validity of the original detention order was not at all in issue in that case. The present case was materially different as it concerned the issuance of the original detention order under s. 6 of the Act, where the first respondent Minister was statutorily

A obligated to consider the reports as prepared by the IO and the inquiry officer. The learned Judicial Commissioner had read *Chua Teck* out of its context and his reliance thereon was clearly misplaced. (paras 24, 29 & 30)

Bahasa Malaysia *Headnotes*

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Ini adalah rayuan terhadap keputusan yang arif Pesuruhjaya Kehakiman kerana memutuskan bahawa pihak berkuasa penahanan, iaitu responden-responden, tidak melakukan apa-apa kesalahan prosedur bila menahan perayu di bawah ss. 3 dan 6 Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta') dan kerana enggan mengeluarkan writ *habeas* C *corpus* yang dipohon perayu. Di hadapan yang arif hakim-hakim mahkamah tertinggi di sini, perayu berhujah bahawa penahanannya adalah tak sah dan tak berperlembagaan kerana beliau tidak menandatangani kenyataan yang direkod oleh pegawai penyiasat ('PP') daripadanya dan juga kerana hak beliau untuk mendapat khidmat guaman dan untuk membuat representasi ke D Lembaga Penasihat telah tidak dijelaskan kepadanya dalam Bahasa Tamil, bahasa pilihannya. Tidak dinafi bahawa tandatangan yang terdapat di kenyataan berkenaan ('kenyataan direkod yang dicabar') adalah berbeza dari tandatangan-tandatangan perayu pada afidavit sokongannya dan Borang 1. Responden-responden, namun begitu, membalas bahawa alasan-alasan yang E dikemukakan oleh perayu tidak mencacatkan penahanan kerana pihak berkuasa penyiasatan, termasuk PP dan pegawai inkuiri, dalam menyediakan laporan-laporan yang menjadi pergantungan Menteri apabila mengeluarkan perintah tahanan, telah mengambil kira bukan sahaja kenyataan direkod yang dicabar tetapi juga pemeriksaan oral terhadap perayu serta kenyataan saksi-F saksi lain. Dihujahkan selanjutnya bahawa perayu memahami Bahasa Malaysia, dan walau apapun kandungan perintah tahanan telah diterangkan kepada perayu dalam Bahasa Tamil. Yang arif Pesuruhjaya Kehakiman, setelah menimbang hujah-hujah di hadapannya, dan merujuk antara lain kepada *Menteri Hal Ehwal Dalam Negeri Malaysia v. Chua Teck ('Chua Teck')*, G mempertahan perintah tahanan sebagai berjustifikasi dan sekali gus menolak permohonan perayu. Perayu dengan itu merayu.

Diputuskan (membenarkan rayuan; mengeluarkan writ *habeas corpus*)
Oleh Wong Dak Wah HB (Sabah & Sarawak) menyampaikan penghakiman mahkamah:

H **(1)** Di bawah s. 73 Akta Keterangan 1950, adalah terbuka bagi mahkamah untuk membandingkan tandatangan-tandatangan bagi menentukan sama ada tandatangan di kenyataan direkod yang dicabar adalah tandatangan perayu. Setelah meneliti tandatangan-tandatangan perayu pada afidavit sokongan beliau dan Borang 1, di mana terdapat banyak tandatangan I beliau di situ, adalah jelas bahawa tandatangan-tandatangan tersebut konsisten antara satu dengan yang lain. Bagaimanapun, apabila

tandatangan-tandatangan berkenaan dibandingkan dengan tandatangan di kenyataan direkod yang dicabar, tandatangan di dokumen terkemudian amat berbeza dengan tandatangan-tandatangan perayu di afidavit dan Borang 1.

(2) PP dan pegawai inkuiri telah berikrar bahawa perayu telah menandatangani setiap satu muka surat kenyataan direkod yang dicabar. Fakta bagaimanapun menunjukkan sebaliknya, kerana bukan setiap muka surat terdapat tandatangan perayu. Memandangkan penegasan ini adalah bertentangan dengan apa yang kelihatan pada permukaan dokumen, maka terdapat merit pada hujah perayu bahawa kenyataan direkod yang dicabar adalah cacat.

(3) Seksyen 4(1) dan 4(5) Akta mewajibkan supaya suatu kenyataan yang direkod ditandatangani oleh orang yang membuat kenyataan tersebut. Mengambil kira dapatan mahkamah ini bahawa kenyataan direkod yang dicabar adalah cacat, maka berlaku pelanggaran terhadap peruntukan wajib ini. Kegagalan mematuhi peruntukan wajib sedemikian semestinya menjadikan penahanan tak sah.

(4) Responden pertama mempunyai kewajipan statutori untuk menimbang laporan-laporan berkaitan sebelum membuat keputusan untuk menahan perayu. Satu komponen laporan-laporan tersebut adalah kenyataan yang direkod dari perayu, di mana undang-undang menetapkan ia mesti ditandatangani oleh pembuatnya. Laporan seperti tersebut itu mesti dipertimbang oleh Menteri sebelum mengarahkan mindanya untuk mengeluarkan perintah tahanan. Oleh yang demikian, hujah bahawa pemeriksaan oral terhadap perayu telah membekalkan bahan yang mencukupi untuk Menteri mengeluarkan perintah tahanan adalah tidak bermerit, kerana itu hanya akan mensia-siakan peruntukan mandatori tersebut.

(5) *Chua Teck* adalah berkaitan kuasa Menteri untuk melanjutkan perintah tahanan yang dikeluarkan di bawah s. 11A Akta serta kesahan tindakan Menteri mempertimbang nasihat dari Lembaga Penasihat yang tidak ada kuasa untuk memberi nasihat sedemikian. Adalah jelas bahawa dalam kes tersebut isu mengenai kesahan perintah tahanan asal langsung tidak berbangkit. Kes semasa adalah berbeza secara material kerana ia menyangkuti pengeluaran perintah tahanan asal di bawah s. 6 Akta, di mana responden pertama Menteri diwajibkan oleh statut untuk mempertimbang laporan-laporan seperti yang disediakan oleh PP dan pegawai inkuiri. Yang arif Pesuruhjaya Kehakiman telah membaca *Chua Teck* di luar konteks dan pergantungan beliau ke atas kes tersebut jelas tersasul.

Case(s) referred to:

Kamal Azam Norddin v. Timbalan Menteri Dalam Negeri & Ors (Criminal Appeal No: 05(HC)-133-05-2018(B)) (Unreported) ***(refd)***

Lui Ah Yong v. Superintendent of Prisons, Penang [1975] 1 LNS 91 HC ***(refd)***

Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v. Chua Teck [1990] 1 CLJ 220; [1990] 1 CLJ (Rep) 178 SC ***(dist)***

Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors [2006] 4 CLJ 687 FC ***(refd)***

Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Satu Lagi [1994] 4 CLJ 47 SC ***(refd)***

Re Datuk James Wong Kim Min; Minister Of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min [1976] 1 LNS 129 FC ***(refd)***

SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors [2009] 6 CLJ 705 FC ***(refd)***

Yeap Hock Seng v. Minister of Home Affairs, Malaysia [1975] 2 MLJ 279 ***(refd)***

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(3), 4(1), (5), 5(4), 6(1)(a), (b), 9(2)(a), 11A

Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, r. 3(1)(a)

Evidence Act 1950, s. 73

Federal Constitution, art. 151(1)(a)

For the appellant - Sivananthan Nithyanantham & Jay Moy Wei Jiun; M/s Sivananthan
For the respondents - Muhammad Sinti; SFC

[Editor's note: For the High Court judgment, please see Vishnu Telagan v. Timbalan Menteri Dalam Negeri Malaysia & Ors [2018] 1 LNS 1549 (overruled).]

Reported by Wan Sharif Ahmad

JUDGMENT

David Wong Dak Wah CJ (Sabah & Sarawak):

Introduction

[1] This appeal stemmed from the decision of the High Court refusing to issue the appellant a writ of *habeas corpus*. We heard the appeal on 12 February 2019 and after careful consideration, unanimously allowed it.

[2] We set aside the order of the High Court, allowed the appellant's application for a writ of *habeas corpus* and ordered that he be released from detention with immediate effect. These are our written reasons.

Background Facts

[3] The appellant was arrested and detained under s. 3 of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) on 24 March 2017. The first respondent duly issued the order of detention (detention order) on 18 May 2017 detaining the accused for a period of two years at Pusat Pemulihan Akhlak Muar, Johor with immediate effect.

[4] The appellant argued that his detention was invalid for two reasons: A

(i) firstly, that his alleged statement recorded by Inspector Muhamad lzhar bin Mohd Sani ("impugned recorded statement") was defective as the appellant never signed it. The appellant claimed that it was someone else who signed it; and

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(ii) secondly, the appellant's rights to make representations to the Advisory Board and to counsel as contained in the detention order were never explained to him in Tamil rendering his detention in breach of art. 151(1)(a) of the Federal Constitution, s. 9(2)(a) of the Act, and r. 3(1)(a) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 (1987 Rules). C

[5] On the first issue, the appellant argued that he had never signed his recorded statement. He claimed that any signature apparent there was not his. In response, the respondents argued that there was an affidavit in reply by Insp Izhar deposing that he had considered not only the appellant's recorded D statement but also statements by other witnesses leading up to the report which the first respondent considered before issuing the impugned detention order. This affidavit in reply, the respondents said, remained unrebutted by the appellant.

[6] On the second issue, the appellant's case was that he was not at all E provided with a Tamil interpreter explaining to him his rights prior to the detention order stage.

[7] In response, the learned Senior Federal Counsel for the respondents argued that the affidavits showed that while the appellant's preferred F language was Tamil, he could understand Bahasa Malaysia. In any case, there was present one detective corporal Gopiraj a/l Moghan who translated the contents of the impugned detention order to the appellant in Tamil. In the result, the respondents took the position that the said contents were explained to the appellant twice. The respondents also alleged that there were in fact six deponents from various departments capable of verifying that the G appellant understood Bahasa Malaysia.

The Decision Of The High Court

[8] On the first issue, the learned Judicial Commissioner opined that the investigating authorities in making their reports did not merely rely on the H appellant's impugned recorded statement but surely must have made oral inquiries of the appellant and had also considered the statements of other witnesses recorded by him. In support of his decision, the learned Judicial Commissioner relied on the authority of *Menteri Hal Ehwal Dalam Negeri,Malaysia & Ors v. Chua Teck* [1990] 1 CLJ 220; [1990] 1 CLJ (Rep) 178; [1990] 1 MLJ 104. I

[9] On the second issue, the learned Judicial Commissioner agreed with the respondents that on the evidence the appellant appeared to understand Bahasa Malaysia and that in any event, the contents of the impugned detention order were explained to the appellant in Tamil with the assistance of Detective Corporal Gopiraj. Thus, the High Court held that there was no procedural non-compliance, and accordingly refused the appellant's application for *habeas corpus*.

Our Decision

The Law on Habeas Corpus Generally

[10] The law on *habeas corpus* is trite. It is not a discretionary remedy. The writ must be issued if the court finds that the detenu is illegally or improperly detained. See *Yeap Hock Seng v. Minister of Home Affairs, Malaysia* [1975] 2 MLJ 279 where at p. 281, Abdoolcader J said as follows:

> The grant of *habeas corpus* is as of right and not in the discretion of the court as in the case of such extraordinary legal remedies as *certiorari*, prohibition and *mandamus*. It is a writ of right against which no privilege of person or place can be of any avail (*R v. Pell And Offly* 84 ER 720). The heavy musketry of the law will always be brought to bear upon any suggestion of unlawful invasion or infringement of the personal liberty of an individual in the form of *habeas corpus* and kindred orders where necessary to grant relief when warranted. It was aptly put in the American case of *State ex rel Evans v. Broaddus* 245 Mo 123 140 that at least in times of peace every human power must give way to the writ of *habeas corpus* and no prison door is stout enough to stand in its way.

[11] Where a detainee challenges his detention as being illegal, the burden lies on the detaining authority to show that the detention is legal. *SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors* [2009] 6 CLJ 705 at p. 710 where Gopal Sri Ram FCJ said as follows:

> It is settled law that on an application for *habeas corpus* the burden of satisfying the court that the detention is lawful lies throughout on the detaining authority. See, *Chng Suan Tze v. The Minister of Home Affairs & Ors And Other Appeals* [1988] 1 LNS 162. In *Mohinuddin v. District Magistrate, Beed* AIR [1987] SC 1977, the Supreme Court of India observed as follows in the context of art. 22 of the Indian Constitution from which is drawn our art. 151:
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> > It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the Court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. This Court on more occasions than one has dealt with the question and it is now well-settled that it is incumbent on the State to satisfy the Court that the detention of the petitioner/detenu was legal and in conformity not only with the mandatory provisions of the Act but also strictly in accord with the constitutional safeguards embodied in Art. 22(5).

[12] Even if a detention was originally made in exercise of valid legal power, said detention may subsequently become invalid over a passage of time. See: *Lui Ah Long v. Superintendent of Prisons, Penang* [1975] 1 LNS 91; [1977] 2 MLJ 226 where at pp. 227-228 Arulanandom J said:

> The second limb of the argument merits greater consideration, ie, whether a detention which at its inception was legal could become illegal as a result of passage of time or for other reasons. The answer to this question will necessarily determine the result of this application ... In view of this it is quite obvious that the authorities have exhausted all avenues and are unable to remove the applicant to his place of embarkation or his country of citizenship. The powers of detention under section 34(1) are clearly and unambiguously limited to detention for the purposes of removal to one of two places, ie, the place of embarkation or country of citizenship and therefore the moment the detaining authorities have failed or found themselves in a position where the object of detention cannot be fulfilled, then it cannot be argued that further detention remains lawful. The purpose of the detention having been frustrated, continued detention a *fortiori* becomes unlawful.

[13] Further, the applicant is entitled to take advantage of any technical defect which has the effect of invalidating the detention. See generally: *Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Lagi* [1994] 4 CLJ 47 where at pp. 55, Wan Yahya SCJ held as follows:

> [I]n cases of this nature the appellant is nevertheless entitled to take advantage of any technical imperfection which has the effect of invalidating the restrictive order; or to use the precise words of Regby J in *Ex Parte Johannes Choeldi & Ors* [1960] 26 MLJ 184 at 186:
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> > The distinction, no doubt, is a highly artificial one. But this is an application for a writ of *habeas corpus*, and the applicants in matters which concern their personal liberty, are entitled to avail themselves of any technical defects which may invalidate the order which deprives them of that liberty.

The First Issue - The Impugned Recorded Statement

[14] It must be stated at the outset, that the appellant appeared to mount his challenge against the decision-making process leading up to the impugned detention order. This court has held in *Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2006] 4 CLJ 687, at p. 702, that the reports specified in s. 6 of the Act are a critical pre-condition to the Minister's decision to detain. Any irregularity in this process is amenable to judicial review.

[15] For clarity, the relevant procedure leading up to the issuance of a detention order is this. Under s. 3(3) of the Act, the investigating officer (in this case Insp lzhar), shall complete an investigation report and submit that to the inquiry officer. The inquiry officer shall then inquire whether there are grounds to detain the subject. He must then make his own investigation report under s. 5(4) of the Act.

[16] The process then continues to the Minister stage. Under s. 6(1)(a) and (b) of the Act, the Minister is required to consider both the investigating officer's report prepared under s. 3(3) of the Act and the inquiry officer's report submitted to the Minister by virtue of s. 5(4) of the Act.

[17] On the appellant's impugned recorded statement, it is open, under s. 73 of the Evidence Act 1950 for the court to compare signatures to ascertain whether such signature is validly of whom it purports to be. We perused the appellant's signature as it appeared in his:

(i) affidavit supporting his *habeas corpus* application; and

(ii) in Form I which also had portions possessing his signature accepting service of the impugned detention order. His signature appeared numerous times in that document.

[18] The signatures in the above two documents were of course given at different times but we nonetheless found that they were consistent. We then contrasted said signatures with the one in the appellant's impugned recorded statement and found that his signature therein was markedly different from the ones in his supporting affidavit and in Form I.

[19] Also to note, both Insp Izhar and Detective Corporal Gopiraj averred in their respective affidavits in reply that the appellant signed each and every page of his impugned recorded statement. Having perused that document, we found that that was indeed not the case. We did not find the appellant's signature on every page. Simply put, their said averments materially contradicted what was apparent from the face of that very document. We therefore found merit in the appellant's contention that the impugned recorded statement was defective.

[20] That being said, the larger question here was whether the defectiveness of the impugned recorded statement tainted the validity of the impugned detention order.

[21] Now, the investigating officer Insp Izhar averred in para. 23 of his affidavit in reply that he had not only considered the appellant's impugned recorded statement but also the statements of other witnesses the contents of which he could not disclose for the benefit of their protection.

[22] The inquiry officer similarly averred in para. 14 of his affidavit in reply that he did not merely rely on the initial police investigations but also conducted his own physical examination on the appellant and questioned the various witnesses himself. He said that he had included this in his s. 5(4) report. On what the inquiry officer submitted to the first respondent, the appropriate portions of para. 14 of his affidavit bear reproduction as follows:

> **Saya telah menyatakan dalam laporan lengkap tersebut bahawa berdasarkan laporan lengkap penyiasatan oleh pihak polis** dan siasatan fizikal yang saya telah jalankan atas pemohon serta keterangan daripada saksi-saksi saya telah berpuas hati bahawa terdapat alasan-alasan yang

munasabah untuk mempercayai bahawa Pemohon mempunyai dan pernah ada kaitan dengan aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya … Saya sesungguhnya menegaskan bahawa semua tindakan yang telah disempurnakan dengan menepati segala peruntukan undang-undang …

(emphasis added)

[23] The first respondent averred in his affidavit that upon perusing the reports, he was satisfied that there were grounds to detain the appellant and thereby issued the impugned detention order.

[24] The learned Judicial Commissioner relied on the judgment of the Supreme Court in *Chua Teck (supra)* to hold that the Minister's detention order may still be sustained on the grounds that he satisfied himself through the various reports that the detention was justifiable. Upon scrutinising that judgment, we, with respect, opined that the learned Judicial Commissioner read that judgment out of context.

[25] Briefly, the facts in *Chua Teck (supra)* were these. The detenu was detained under the same provision as the appellant in this case. As the headnotes have it, the Deputy Minister who signed the detention order had stated that he was satisfied that the respondent-detenu had associated himself in activities relating to or involving drug trafficking and that it was necessary that the respondent be detained.

[26] The Advisory Board later reviewed the respondent's case and submitted a report to the Deputy Minister, recommending an extension of the detention order. The Deputy Minister considered the reports and information relating to the conduct and activities of the detenu and being satisfied that it was necessary in the interest of public order for the detention order to be extended. He thereby extended it for a further period of two years 'on the same grounds as the order was originally made'.

[27] The High Court issued a writ of *habeas corpus*, but on appeal, the Federal Court reversed that decision. The gist of the complaint was that the Advisory Board had no power to advise the Deputy Minister to grant an extension of a detention order. Simply put, it was argued that the Deputy Minister erred in considering the advice of the Advisory Board.

[28] It was on this point that Hashim Yeop Sani (CJ Malaya) held it is open to the Minister to consider all information or reports available to him. So long as the Minister was satisfied that the original grounds of detention existed, he may exercise his discretion to extend the detention order.

[29] As was apparent from the facts of that case, that case concerned the power of the Minister to extend a detention order he issued under s. 11A of the Act. So, the validity of the original detention order was not at issue in that case. The argument there instead concerned the validity of the Minister considering the advice of an institution which was not so empowered to give.

[30] The present case was materially different. It concerned the issuance of the original detention order under s. 6 of the Act. Here, the first respondent was statutorily obligated to consider those reports. It is in this sense that we considered *Chua Teck (supra)* distinguishable. It therefore followed that the learned Judicial Commissioner's reliance on it was, with respect, misplaced.

[31] In the present case, it bears repeating that the first respondent considered primarily two reports. One prepared by the investigating officer, Insp Izhar, and the other by the inquiry officer. And, while the inquiry officer noted that he conducted his own investigation, he did state that in making his own report to the first respondent, that he had also placed reliance on what he garnered from Insp Izhar.

[32] Seeing as how the law mandatorily requires the first respondent to consider these reports, and that the first respondent himself deposed that he had done so, it is clear that he had exercised his discretion to issue the impugned detention order based on the picture that was painted for him.

[33] We agree that the appellant did not rebut the fact that the reports submitted to the first respondent may have included other bases justifying his detention. But his complaint was that a component of those reports contained his defective impugned recorded statement. Equally true is the fact that nowhere had the investigating nor the inquiry officers rebutted the allegations that the appellant never made nor signed the said impugned recorded statement.

[34] Section 4(1) and s. 4(5) of the Act read:

> (1) For the purpose of satisfying the Minister that an order under subsection 6(1) should be made and for the purpose of enabling the Minister to furnish a statement under paragraph 9(2)(b), *a police officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined* **...**
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> (5) A statement made by any person under subsection (1) **shall bear the date and time of making thereof and shall be signed by the person making it** or affixed with his thumbprint, as the case may be, after it has been read to him in the language in which it was made **and after he has been given an opportunity to make any corrections he may wish**.
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> (emphasis added)

[35] We noted that the above provisions mandatorily require any statement recorded to be signed by the person who made it. Considering our finding that the impugned recorded statement as being defective, there had been a clear breach of this mandatory provision. Non-compliance with pertinent mandatory provisions render the detention illegal. See generally: *Re Datuk James Wong Kim Min; Minister Of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 LNS 129; [1976] 2 MLJ 245 where at p. 251, Lee Hun Hoe (CJ Borneo), said this:

> Preventive detention is, therefore, a serious invasion of personal liberty. Whatever safeguard that is provided by law against the improper exercise of such power must be zealously watched and enforced by the court. In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty. The material provisions of the law authorising detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be liberally interpreted. Where the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith. Where personal liberty is concerned an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty. See *Ex parte Johannes Choeldi & Ors* [1960] MLJ 184.

[36] This is all the more so in a matter which actually lead the first respondent into his decision to detain the appellant. On this point, the following words of Augustine Paul FCJ in *Jailani Kasim (supra)* at p. 702, are most relevant:

> The challenge of the appellant in this case is not as to the validity of the prior arrest but as to the regularity of the current detention order in the light of defects in the procedure leading to the making of the order. The authority relied on cannot therefore be used as a shield to hide from procedural defects in the making of the current detention order. The reports specified in s. 6(1)(a) and (b) of the Act play a very significant role in the making of a detention order against a person. The Minister must consider these reports before making a detention order. They are therefore pre-conditions to the exercise of power under s. 6(1) of the Act. They are part of the decision making process and not the decision itself. Thus they amount to procedural requirements governing the exercise of discretion by the Minister in making a detention order ... A breach of this requirement is therefore subject to judicial review.

[37] In other words, had the impugned recorded statement been properly recorded, the resulting two reports would have painted a different picture. As we see it, all the various statements be it of the appellant or of other witnesses form the different pieces of the puzzle. The Act effectively requires such statements recorded to be accurate hence the provision in s. 4(5) enabling the maker of the statement to make corrections if necessary. It is only upon the proper collection of statements that the full and final picture may be presented to the first respondent before deciding whether to detain or not.

[38] We considered this to be the proper construction to be afforded to the mandatory provisions of s. 4(1) and s. 4(5) of the Act lest they be rendered superfluous and the strict compliance thereto as being meaningless or a mere facade.

[39] The respondents claimed that this defective statement point was recently considered in a recent decision of this court in *Kamal Azam Norddin v. Timbalan Menteri Dalam Negeri & Ors* (Criminal Appeal No: 05(HC)-133-05-2018(B)) delivered on 24 January 2019.

[40] The respondents argued that the Federal Court there had heard a similar argument on this point and refused the detainee a writ of *habeas corpus*. As at the date of our decision in this appeal, no written grounds had been delivered in respect of that case and so we were therefore unable to glean any reasons why such a decision was made. Therefore, we did not see how the said judgment lent any support to the respondents' case. Surely, in arriving at our decision, we had to consider and apply the law according to the facts and circumstances of this case.

[41] To put it concisely, the first respondent was statutorily bound to consider the ss. 3(3) and 5(4) reports before making his decision to detain the appellant. A component of those reports is the appellant's recorded statement which the mandatory provisions of the law require to be signed by the maker. It must be considered by the Minister before directing his mind to grant the detention order. Surely, he should be apprised of the full and proper picture lest there be reason for having mandatory provisions requiring him to consider those reports. Accordingly, we found no favour with what was essentially an argument that the appellant's defective impugned recorded statement could be simply slipped under the rug on the reason that the oral examinations of the appellant and other witnesses painted a good enough picture of the Minister to exercise his discretion to issue the detention order. That, to us, also defeated the purpose of having a mandatory provision requiring the said statement to be signed subject to corrections, in the first place.

[42] In this sense, in respect of the first issue, we arrived at the view that there was procedural non-compliance on the part of the respondents. We therefore opined that the respondents had plainly failed to meet their burden to justify the legality of the appellant's detention. Therefore, on the first issue alone, we saw it fit to allow the appeal and thereby issued a writ of *habeas corpus* for the appellant's release.

The Second Issue - The Alleged Lack Of A Tamil Interpreter

[43] Having decided that the appellant was entitled to a writ of *habeas corpus* on the first issue alone, we did not consider it necessary to deliberate on the second issue.

Conclusion

[44] For the reasons aforementioned, we were of the view that the learned Judicial Commissioner had erred in arriving at the conclusion that he did. In the result, we considered this an appropriate case for appellate intervention.

[45] Thus, in our considered view, as the detaining authority was unable to meet its burden to satisfy us that the strict requirements of the law were met, we arrived at the view that the detention was unlawful, and thereby allowed the appeal. We accordingly issued a writ of *habeas corpus* and ordered the appellant be released forthwith.